Elizabeth Chin Yew Kim & Anor v Dato' Ong Gim Huat (sued as public officer of Hospital Lam Wah Ee) and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS P-02 (NCVC)(W)-672–04 OF 2015, P-02(NCVC)(W)-673–04 OF 2015 AND P-02(NCVC)(W)-734–04 OF 2015

ALIZATUL KHAIR, ZABARIAH MOHD AND HARMINDAR SINGH JJCA

17 NOVEMBER 2016

Tort — Negligence — Medical negligence — First defendant sued for negligence in failing to undertake McRobert's manoeuvre and apply supra-pubic pressure which caused infant to suffer 'shoulder dystocia' — Whether there was breach of standard of care — Whether element of causation satisfied

There were two suits brought by the parties in the court below whereby the first suit was for medical negligence claim against one Dr Quah Thong Sai ('the first defendant') and a claim in vicarious liability against Hospital Lam Wah Ee ('the hospital') for the negligence on part of the first defendant during the process of delivery of an infant known as Natahlie Nordberg ('the infant') which caused 'shoulder dystocia' to the infant. The claim for medical negligence was allowed by the trial judge on the ground that the first defendant had failed to undertake the McRobert's manoeuvre and apply supra-pubic pressure to overcome the shoulder dystocia, nevertheless the claim for vicarious liability was dismissed. The second suit by the hospital against the parent of the infant for outstanding charges was also allowed by the trial court. Aggrieved with the decisions, the parties filed the present appeals. The issues for determination were: (a) whether there was a breach of the standard of care and whether the element of causation was satisfied; (b) on the vicarious liability of the hospital; (c) on the quantum and damages; and (d) on the claim by the hospital for outstanding charges.

Held, dismissing the appeals:

(1) There was no palpable error in the learned judge coming to his conclusion that the evidence of the first defendant that he indeed place the mother in the McRobert's position and used supra-pubic pressure was an afterthought and 'inherently incredible'. On the evidence, the midwife and other nurses were not called to corroborate the first defendant's claim. The clinical notes, medical reports and testimonies of the parents also showed that the mother was not place in the McRobert's position and no supra-pubic pressure was applied. The court agreed with the learned judge's conclusion that the first defendant fell below the standard of care (see paras 23, 25, 27–28 & 30).

(2) The Royal College of Obstetricians and Gynaecologists Guideline No 42 on shoulder dystocia ('RCOG Guideline') stated that the McRobert's manoeuvre is the single most effective intervention with reported success rates as high as 90%, low rate of complication and thus should be employed first. In view of the high success rate, the learned judge was right to conclude that it was the baby's shoulder dystocia and the first defendant's flawed delivery method of failing to employ the McRobert's position and apply supra-pubic pressure which led to the infant's injuries for which she now seeks compensation. Thus, the element of causation had been established and the learned judge was right in coming to his conclusion that the first defendant was negligent in his delivery of the baby (see paras 39–41).

(3) Apart from showing that the first defendant was attached to the hospital as an obstetrician and gynaecologist, no other evidence was adduced to prove vicarious liability, hence, the appeal against the hospital was without merit. As for the issues of quantum and damages, the court agreed with the decisions of the court below (see paras 42–47).

(4) With regards to the claim by the hospital for the outstanding charges, the amount outstanding was not in dispute and there were no reasons advanced as to why this claim ought to be disallowed. Thus, there was no merit in the appeal as the claim was rightfully allowed by the trial court (see para 48).

[Bahasa Malaysia summary

Terdapat dua guaman yang dimulakan oleh pihak-pihak di mahkamah bawahan di mana guaman pertama adalah untuk kecuaian perubatan terhadap Dr Quah Thong Sai ('defendan pertama') dan satu tuntutan untuk liability vikarius terhadap Hospital Lam Wah Ee ('hospital tersebut') kerana kecuaian di pihak defendan pertama semasa proses melahirkan bayi yang dikenali sebagai Natahlie Nordberg ('bayi tersebut') yang menyebabkan 'shoulder dystocia' kepada bayi tersebut. Tuntutan untuk kecuaian perubatan dibenarkan oleh hakim perbicaraan atas alasan bahawa defendan pertama telah gagal menjalankan manuver McRobert dan mengenakan tekanan *supra-pubic* untuk mengatasi dystocia bahu, namun tuntutan liabiliti vikarius telah ditolak. Guaman kedua oleh hospital tersebut terhadap ibu bapa bayi tersebut untuk bayaran tertunggak juga dibenarkan oleh mahkamah perbicaraan. Terkilan dengan keputusan-keputusan itu, pihak-pihak telah memfailkan rayuan-rayuan ini. Isu-isu untuk ditentukan adalah: (a) sama ada terdapat pelanggaran piawai jagaan dan sama ada elemen penyebaban telah dipenuhi; (b) berhubung liabiliti vikarius hospital tersebut; (c) berhubung kuantum dan ganti rugi; dan (d) berhubung tuntutan oleh hospital tersebut untuk bayaran tertunggak.

Diputuskan, menolak rayuan-rayuan:

(1) Tiada kesilapan ketara apabila hakim berkenaan membuat kesimpulan beliau yang keterangan defendan pertama bahawa dia memang meletakkan ibu dalam kedudukan McRobert dan menggunakan tekanan *supra-pubic* adalah ketinggalan zaman dan 'inherently incredible'. Berdasarkan keterangan itu, bidan dan jururawat lain tidak dipanggil untuk menyokong tuntutan defendan pertama. Nota-nota klinikal, laporan perubatan dan keterangan daripada ibu bapa juga menunjukkan bahawa ibu itu tidak diletakkan dalam kedudukan McRobert dan tiada tekanan *supra-pubic* telah digunakan. Mahkamah bersetuju dengan kesimpulan hakim yang arif bahawa defendan pertama tidak mematuhi piawai jagaan (lihat perenggan 23, 25, 27–28 & 30).

(2) Garis Panduan No 42 Royal College of Obstetricians and Gynaecologists berhubung bahu dystocia ('Garis Panduan RCOG') menyatakan bahawa gerakan McRobert adalah satu campur tangan paling berkesan dengan kadar kejayaan yang dilaporkan setinggi 90%, kadar rendah komplikasi dan oleh itu patut digunakan dahulu. Berdasarkan kadar kejayaan yang tinggi, hakim yang arif adalah wajar untuk membuat kesimpulan bahawa ia adalah bahu dystocia bayi tersebut dan cara menyambut kelahiran defendan pertama yang cacat kerana gagal mengguna pakai kedudukan Mc Robert dan menggunakan tekanan *supra-pubic* yang membawa kepada kecederaan bayi tersebut yang mana dia kini memohon pampasan. Oleh itu, elemen penyebaban perlu dibuktikan dan hakim yang arif adalah wajar dalam membuat kesimpulannya bahawa defendan pertama telah cuai dalam menyambut kelahiran bayi tersebut (lihat perenggan 39–41).

(3) Selain daripada menunjukkan bahawa defendan pertama bertugas di hospital sebagai pakar perbidanan dan sakit puan, tiada keterangan lain telah dikemukakan untuk membuktikan liabiliti vikarius, dengan itu, rayuan terhadap hospital itu adalah tanpa merit. Berhubung isu-isu kuantum dan ganti rugi, mahkamah bersetuju dengan keputusan mahkamah bawahan (lihat perenggan 42–47).

(4) Berhubung tuntutan oleh hospital tersebut untuk bayaran tertunggak, jumlah tertunggak itu tidak dipertikaikan dan tiada sebab dikemukakan berhubung kenapa tuntutan ini patut tidak dibenarkan. Oleh itu, tiada merit dalam rayuan ini kerana tuntutan tersebut telah dibenarkan sewajarnya oleh mahkamah perbicaraan (lihat perenggan 48).]

Notes

For cases on medical negligence, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 1589–1603.

Cases referred to

Bolam v Friern Hospital Management Committee [1957] 2 All ER 118, QBD (refd)

Bolitho (administratix of the estate of Bolitho (deceased) v City and Hackney Health Authority [1997] 4 All ER 771, HL (refd)

Chin Keow v Government of Malaysia & Anor [1967] 2 MLJ 45, PC (refd)

Clements v Clements 2012 SCC 32, SC (refd)

Foo Fio Na v Dr Soo Fook Mun & Anor [2007] 1 MLJ 593, FC (refd)

Rogers v Whitaker (1992) 175 CLR 479, HC (refd)

Tan Kuan Yau v Suhindrimani [1985] 2 MLJ 22; [1985] CLJ Rep 323, SC (refd)

Topaiwah v Salleh [1968] 1 MLJ 284, FC (refd)

Whitehouse v Jordan and another [1980] 1 All ER 650, CA (refd)

Appeal from: Civil Trial Nos 22NCVC-563–08 of 2012 and 22NCVC-224–03 of 2012 (High Court, Pulau Pinang)

N Ahilan (N Ahilan & Assoc) in Civil Appeal No P-02(NCVC)(W)-672–04 of 2015 for the appellant.

T Sagadevan (Nurulhuda Mansor with him) (Shearn Delamore & Co) in Civil Appeal No P-02(NCVC)(W)-673–04 of 2015 for the appellant.

N Ahilan (N Ahilan & Assoc) in Civil Appeal No P-02(NCVC)(W)-734–04 of 2015 for the appellant.

A Reubankumar (Sitham & Assoc) in Civil Appeal No P-02(NCVC)(W)-672–04 of 2015 for the respondent.

N Ahilan (N Ahilan & Assoc) in Civil Appeal No P-02(NCVC)(W)-673–04 of 2015 for the respondent.

T Sagadevan (Nurulhuda Mansor with him) (Shearn Delamore & Co) in Civil Appeal No P-02(NCVC)(W)-734–04 of 2015 for the first respondent.

A Reubankumar (Sitham & Assoc) in Civil Appeal No P-02(NCVC)(W)-734–04 of 2015 for the second respondent.

Harmindar Singh JCA:

[1] There are three appeals before us arising out of a decision by the High Court at Pulau Pinang given on 30 December 2014. These appeals were ordered to be heard together.

[2] There were two suits filed in the High Court. The first was a medical negligence claim against Dr Quah Thong Sai ('the first defendant') and a claim in vicarious liability against Hospital Lam Wah Ee ('the hospital').

[3] The second suit was a claim by the hospital against the parents of the infant known as Natahlie Nordberg ('the infant') for outstanding charges

incurred at the hospital. Both suits were heard together in the High Court.

[4] The first suit or as we would term it 'the medical negligence suit' was brought against the first defendant on various allegations of breach of duty giving rise to a claim in medical negligence. The first defendant was then practising as an obstetrician and gynaecologist at Law Wah Ee Hospital, Penang.

SALIENT FACTS

[5] It transpired that during the process of delivery, the baby encountered shoulder dystocia whereby after the delivery of the head, the anterior shoulder of the baby could not pass the pubic symphysis. As a result of the shoulder dystocia, the baby suffered brachial plexus injury and mild intellectual impairment.

[6] After having heard the evidence of ten factual and expert witnesses, the learned trial judge dismissed all allegations of negligence except one. This was for the failure on the part of the first defendant to undertake the McRobert's manoeuvre and apply supra-pubic pressure to overcome the shoulder dystocia and deliver the baby. On this sole ground, the first defendant was adjudged to be negligent in the delivery of the baby.

[7] Having found the first defendant liable, the learned judge proceeded to make the following awards:

(a) RM75,000 for the brachial plexus injury;

(b) RM75,000 for the intellectual impairment (ADHD/learning disorder) and anoxic ischaemic injury;

(c) RM30,467.25 as special damages being the hospital charges; and

(d) interest and costs.

[8] The claim against the hospital for vicarious liability was dismissed.

[9] The first defendant is now appealing against both liability and quantum. The infant by her representative, her mother, is appealing against the quantum both in terms of inadequacy or non-award of damages and the dismissal of the claim against the hospital for vicarious liability.

[10] In the other suit brought by the hospital, or what we would call 'the hospital suit', the learned judge allowed the claim by the hospital against the

parents on the outstanding charges incurred during the delivery and after delivery charges or paediatric charges. The sum allowed was RM30,467.85 together with interest and costs.

[11] Both parents are also appealing against this decision.

[12] Before us in respect of the three appeals, several issues were raised to either challenge or support the findings of the High Court. After careful consideration, we came to the following conclusions on the issues raised.

LIABILITY OF THE FIRST DEFENDANT

[13] The first issue is with regards to the liability of the first defendant. It is trite law that in an action for negligence, there must be proof of a duty of care, breach of the standard of care, foreseeable damage and causation. There is no question here that the first defendant owed a duty of care to his patient, the infant. The issue in the instant appeal is whether there was a breach of the standard of care and whether the element of causation was satisfied. The pivotal issue is whether the learned judge was right to find liability on the part of the first defendant in failing to apply the McRobert's manoeuvre and supra-pubic pressure to overcome the shoulder dystocia.

[14] The standard of care that the law demands of a medical practitioner is the standard of the ordinary skilled man exercising and professing to have that special skill (*Chin Keow v Government of Malaysia & Anor* [1967] 2 MLJ 45). It follows that not every error of judgment or mishap that occurs amounts to negligence under the law. It is only that error which no reasonably skilful and competent practitioner in his field would have made is negligence (*Whitehouse v Jordan and another* [1980] 1 All ER 650).

[15] For a long time since 1957, the test of the standard of care required was that set out in *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118 and commonly known as the *Bolam* test. In a nutshell, the test required that the doctor must have acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that medical act.

[16] This deference to the responsible body of opinion in the medical profession was later explained by the House of Lords in *Bolitho (administratix of the estate of Bolitho (deceased) v City and Hackney Health Authority* [1997] 4 All ER 771 as follows (at p 778):

> My Lords, I agree with these submissions to the extent that, in my view, the court is not bound to hold that a defendant doctor escapes liability for negligent treatment or diagnosis just because he leads evidence from a number of medical experts who are genuinely of opinion that the defendant's treatment or diagnosis accorded with

sound medical practice. In *Bolam's case* [1957] 2 All ER 118 at 122; [1957] 1 WLR 583 at 587 McNair J stated that the defendant had to have acted in accordance with the practice accepted as proper by a '*responsible* body of medical men (my emphasis). Later he referred to a standard of practice recognized as proper by a competent *reasonable* body of opinion' (see [1957] 2 All ER 118 at 122; [1957] 1 WLR 583 at 588; my emphasis). Again, in the passage which I have cited from *Maynard's* case, Lord Scarman refers to a 'respectable' body of professional opinion. The use of these adjectives — responsible, reasonable and respectable — all show that the court has to be satisfied that the exponents of the body of opinion relied on can demonstrate that such opinion has a logical basis. In particular, in cases involving, as they so often do, the weighing of risks against benefits, the judge before accepting a body of opinion as being responsible, reasonable or respectable, will need to be satisfied that, in forming their views, the experts have directed their minds to the question of comparative risks and benefits and have reached a defensible conclusion on the matter.

[17] And the House of Lords then came to the following pronouncement (at p 779):

These decisions demonstrate that in cases of diagnosis and treatment there are cases where, despite a body of professional opinion sanctioning the defendant's conduct, the defendant can properly be held liable for negligence (I am not here considering questions of disclosure of risk). In my judgment that is because, in some cases, it cannot be demonstrated to the judge's satisfaction that the body of opinion relied on is reasonable or responsible. In the vast majority of cases the fact that distinguished experts in the field are of a particular opinion will demonstrate the reasonableness of that opinion. In particular, where there are questions of assessment of the relative risks and benefits of adopting a particular medical practice, a reasonable view necessarily presupposes that the relative risks and benefits have been weighed by the experts in forming their opinions. But if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible.

[18] In the leading local case on the subject, *Foo Fio Na v Dr Soo Fook Mun & Anor* [2007] 1 MLJ 593, the Federal Court in essence rejected the *Bolam* test and instead adopted the test in the Australian High Court case of *Rogers v Whitaker* (1992) 175 CLR 479. The Federal Court accepted that the standard of care applicable is not determined solely or primarily by reference to the medical practice followed or supported by a responsible body of opinion in the relevant profession or trade. Although the evidence of acceptable medical practice serves as a useful guide, it is for the courts to adjudicate on the appropriate standard of care.

[19] Now it is not disputed that in cases of shoulder dystocia during delivery, it is imperative that the first step to be taken is to place the mother in the McRobert's position. This would bring about an anatomical alignment or

positioning of the pelvis and the birth canal such that the baby would in most cases be expelled with ease and without significant damage.

[20] The next step would be for the midwife to apply supra-pubic pressure which would push the foetus downward and out of the birth canal. It is only if this manoeuvre fails that other methods are to be employed.

[21] It must follow that failure to adopt this method would mean that the first defendant has fallen below the standards of the reasonably competent practitioner in his field.

[22] In the circumstances, in order to establish liability, it is crucial to determine, as a matter of fact, whether the first defendant had indeed taken these steps to extract the baby from the birth canal.

[23] In this regard, we note, and as the learned judge had duly observed, that the first defendant had steadfastly maintained that he did indeed place the mother in the McRobert's position and used supra-pubic pressure.

[24] The first defendant took pains to assert in his evidence that his omission to state that he did indeed apply the McRobert's manoeuvre and supra-pubic pressure in his medical notes and medical reports was because this procedure was always applied as a matter of course on the onset of the shoulder dystocia.

[25] This testimony of the first defendant was however not accepted by the learned judge. The learned judge concluded that the evidence of the first defendant in this regard was an afterthought and 'inherently incredible'. The question before us is whether the learned judge was entitled to come to this conclusion having regard to all the evidence adduced at the trial.

[26] After careful deliberation, we are of the view that the answer must be in the affirmative.

[27] The learned judge had noted that the clinical notes and the medical reports do not state that the mother was placed in the McRobert's position and supra-pubic pressure was applied. Both the mother ('PW2') and the father ('PW3') of the infant in their testimony confirmed that PW2 was never placed in the McRobert's position.

[28] The learned judge also took into account that the midwife and the other delivery room nurses were not called to corroborate the first defendant's claim that the mother was indeed placed in the McRobert's position. The learned judge also found it questionable whether in the space of 3–4 minutes, the first

defendant could have placed PW2 in the McRobert's position and asked the midwife to apply supra-pubic pressure and then switch to fundal pressure and attempt to hook the baby's shoulder, do an internal rotation and use force to fully deliver the baby at 2.06am. A

[29] The learned judge took the view that given the importance of the McRobert's manoeuvre and supra-pubic pressure, the first defendant would surely have mentioned this in his medical report dated 27 February 2001 addressed to this solicitors Messrs Shearn Delamore & Co. B

[30] Considering the reasons as stated in the foregoing, we find no palpable error in the learned judge coming to his conclusion. Given the reasons as stated, we find that the learned judge was perfectly entitled to come to his findings. C

[31] We should also add that sitting as an appellate court, we are acutely aware that we should be slow to interfere with findings of fact arrived at by the trial court. Interference by an appellate court is warranted if there is insufficient or no judicial appreciation of the evidence adduced at the trial court by the trial judge. In other words, interference is warranted if the findings and conclusion by the trier of fact is not supported by the evidence or worse against the weight of evidence such that the audio-visual advantage that the trial judge has is insufficient to justify such finding or conclusion. D E

[32] In the circumstances, we find no reason to interfere in the findings of breach of duty against the first defendant. We agree with the learned judge's conclusion that the first defendant fell below the standard of care. F

[33] The next issue we have to consider is whether the learned judge failed to consider or appreciate the element of causation. Learned counsel for the first defendant submitted that even if the first defendant had not applied the McRobert's manoeuvre, it does not necessarily mean that he was negligent. In particular, it was contended that there was no evidence which established that had the McRobert's manoeuvre and supra pubic pressure been applied, there was a good chance that the infant would have been spared the birth injuries. G H

[34] The principle of causation is concerned with the relationship between the tortious act and the injury sustained. There must be a causal connection between the breach of duty and the injury suffered. Now proof of causation can often be onerous for the injured patient as he or she is in most cases in a disadvantaged position when compared to the treating medical practitioner. I

[35] Nevertheless, the law places a burden on the plaintiff to prove on a balance of probabilities, as in the instant case, that it was the first defendant's breach of duty which caused the injuries to the infant. Put another way, there

must be proof that if there was no breach by the first defendant in his failure to apply the McRobert's manoeuvre and supra-pubic pressure, the infant would not have suffered the injuries that were sustained.

[36] In this regard, the courts often look to the test of causation commonly known as the 'but for' test. It simply means that 'but for' the defendant's negligent act, the injury would not have occurred. It is in essence a factual inquiry and in medical negligence cases it is often resolved through expert evidence.

[37] We must emphasise that proof on the balance of probabilities simply means proving that something was more likely than not to have occurred. There is no burden to prove with 100% certainty that it was the first defendant's breach which led to the injury. The plaintiff only needs to prove that it was at least 51% likely that it was so. Especially in medical negligence cases, where medicine is not yet an exact science, exact conclusions are unrealistic.

[38] This point on causation is amply covered by authority. We need not go beyond a passage in the judgment of the Supreme Court of Canada in *Clements v Clements* 2012 SCC 32 where the legal test of causation was summarised as follows (at para 14):

> To recap, the basic rule of recovery for negligence is that the plaintiff must establish on a balance of probabilities that the defendant caused the plaintiff's injury on the 'but for' test. This is a factual determination. Exceptionally, however, courts have accepted that a plaintiff may be able to recover on the basis of 'material contribution to risk of injury', without showing factual 'but for' causation. As will be discussed in more detail below, this can occur in cases where it is impossible to determine which of a number of negligent acts by multiple actors in fact caused the injury, but it is established that one or more of them did in fact cause it. In these cases, the goal of tort law and the underlying theory of corrective justice require that the defendant not be permitted to escape liability by pointing the finger at another wrongdoer. Courts have therefore held the defendant liable on the basis that he materially contributed to the risk of injury.

[39] Whilst we have, with respect, no quarrel with the 'material contribution to the risk of injury' test, the case before us can be resolved on the 'but for' causation principle. In order to ascertain if causation was established in the instant case, it is necessary to look at the testimony of the experts. In this connection, the learned judge quite correctly referred to the Royal College of Obstetricians and Gynaecologists Guideline No 42 on shoulder dystocia ('RCOG Guideline') relied upon by PW1, a retired obstetrician and gynaecologist, and the plaintiff's expert witness. The RCOG Guideline states

that the McRobert's manoeuvre is the single most effective intervention with reported success rates as high as 90%. It has a low rate of complication and therefore should be employed first.

[40] Considering that success rates can be as high as 90%, we can only think that the learned judge was right to conclude that it was the baby's shoulder dystocia and the first defendant's flawed delivery method of failing to employ the McRobert's position and apply supra-pubic pressure which led to the plaintiff's injuries for which she now seeks compensation.

[41] In the circumstances, we find that the element of causation had been established and the learned judge was right in coming to his conclusion that the first defendant was negligent in his delivery of the baby. Accordingly, we find no basis for interfering with the learned judge's finding of liability against the first defendant.

VICARIOUS LIABILITY OF HOSPITAL

[42] We next deal with the claim against the hospital for vicarious liability. We accept that apart from showing that the first defendant was attached to the hospital as an obstetrician and gynaecologist, no other evidence was adduced to prove vicarious liability. We therefore agree that the appeal against the hospital in this regard is without merit.

QUANTUM OF DAMAGES

[43] We now come to the issue of quantum and damages. On the question of general damages awarded for the injuries sustained and the resulting disabilities, we find no reason to interfere with the awards. In our view, the awards given were neither manifestly excessive nor manifestly inadequate or entirely erroneous or plainly unreasonable (*Topaiwah v Salleh* [1968] 1 MLJ 284; *Tan Kuan Yau v Suhindrimani* [1985] 2 MLJ 22; [1985] CLJ Rep 323).

[44] On the claim for attention deficit hyperactivity disorder ('ADHD'), we see no reason to interfere with the learned judge's discretion in preferring to give more weight to the evidence of PW4, a child and adult psychiatrist, as opposed to DW3 who was a consultant neonatologist and paediatrician.

[45] The learned judge found the evidence of PW4 to be more logical and reasonable. In any event, PW4's area of specialisation was in the field of ADHD and learning disorders in children whereas DW3 specialised in medical conditions for new-borns and children. In the circumstances, the learned judge was justified in preferring the testimony of PW4 for the reasons that were given.

[46] We also agree with the learned judge that the claims for nursing care, transport costs, cost for special school, cost of physiotherapy, claim for loss of prospect of marriage and claim for extra food and nourishment were without merit and were rightly disallowed.

[47] We also find ourselves in agreement with the learned judge that the claims for aggravated and exemplary damages were not applicable to the facts and circumstances of the instant case and were wholly unwarranted. Needless to add, they were rightly disallowed by the High Court.

[48] We now come to the last issue of the claim by the hospital for the outstanding charges. The amount outstanding was not in dispute. The mother (PW2) is the primary patient whilst the husband (PW3) is the guarantor. No reasons were advanced as to why this claim by the hospital ought to be disallowed. Accordingly we find no merit in the appeal as the claim was rightfully allowed by the trial court.

CONCLUSION

[49] In the circumstances, and for the reasons we have stated, and in view of our decision and conclusion on the issues raised in this appeal, we find no reason to interfere in the decision of the learned trial judge. We are of the unanimous view that there is no appealable error to warrant appellate interference. All the appeals are accordingly dismissed. In view of the circumstances that exist in these appeals, there will be no order as to costs.

Appeals dismissed.

Reported by Dzulqarnain Ab Fatar